No. 6561

No. 15355

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United States
Court of Appeals
for the Ninth Circuit

SHEET METAL CONTRACTORS ASSOCIATION OF SAN FRANCISCO, a Corporation, et al.,

Appellants,

vs.

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, et al.,

Appellees.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Southern Division.

FILED
JAN 18 1957
PAUL P. O'BRIEN, CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—1-18-57

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

ROTH AND BAHRS,
351 California Street,
San Francisco 4, California,

For Appellants.

GILBERT, NISSEN & IRVIN,
117 West Ninth Street,
Los Angeles 15, California,

For Appellees.

In the United States District Court, Northern District of California, Southern Division

No. 35,206

SHEET METAL CONTRACTORS ASSOCIATION OF SAN FRANCISCO, a California Corporation; ANDERSON & ROWE, INC., a California Corporation; ATLAS-UNIVERSAL SERVICE, INC., a California Corporation; ATLAS HEATING & VENTILATING CO., LTD., a California Corporation; CONLIN & ROBERTS, a California Corporation; FRASER & JOHNSTON CO., a California Corporation; GILMORE AIR CONDITIONING SERVICE, a California Corporation; WM. P. GOSS SHEET METAL WORKS, a California Corporation; HOLBROOK MERRILL CO., a California Corporation; INTERNATIONAL SALES CO., a California Corporation; NEW MISSION HEATING & VENTILATING CO., a California Corporation; OTIS SHEET METAL, INC., a California Corporation; WESTERN PLUMBING & HEATING CO., INC., a California Corporation; M. G. WEST COMPANY, a California Corporation; PRICEMETAL CORPORATION, a California Corporation; LLOYD HANNAN, an Individual Doing Business Under the Firm Name and Style of ACE SHEET METAL WORKS; FRED J. BACIOCCO, an Individual Doing Business Under the Firm

Name and Style of STAR SHEET METAL & HEATING CO.; ANDREAS THOMA, an Individual Doing Business Under the Firm Name and Style of THOMA'S SHEET METAL SHOP; HAROLD R. PIKE, an Individual Doing Business Under the Firm Name and Style of AMERICAN HEATING & SHEET METAL CO.; J. OESER, an Individual Doing Business Under the Firm Name and Style of STANDARD FURNACE & PLUMBING CO.; BENJAMIN BARAZOTO, an Individual Doing Business Under the Firm Name and Style of GENEVA SHEET METAL CO.; EDWIN STEVENS, an Individual Doing Business Under the Firm Name and Style of APEX SHEET METAL WORKS; GEORGE P. SCHMITT; SAMUEL COHEN, AL WEST and JAMES McNEILLY, Co-Partners, Doing Business Under the Firm Name and Style of COLAN HEATING & SHEET METAL CO.; ROY DELUCCHI, ELMO DELUCCHI and JOHN JOSEPH DELUCCHI, Co-Partners, Doing Business Under the Firm Name and Style of DELUCCHI SHEET METAL WORKS; FLORENCE M. NELSON, JAMES A. NELSON, JR., and E. L. NATTKEMPER, Co-Partners, Doing Business Under the Firm Name and Style of JAMES A. NELSON CO.; WM. QUIEROLO, SADIE QUIEROLO and RICHARD W. QUIEROLO, Co-Partners, Doing Business Under the Firm Name and Style

of Q-ROLO SHEET METAL PRODUCTS; WM. P. SCOTT, W. W. COCKINS, JOHN L. McCABE and J. J. NICHOLSON, Co-Partners, Doing Business Under the Firm Name and Style of SCOTT CO.; CHAS. F. ANDREWS and EDWARD E. SALOMONE, Co-Partners, Doing Business Under the Firm Name and Style of VALLEY SHEET METAL CO.,

Plaintiffs,

vs.

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; LOCAL UNION No. 104 of Sheet Metal Workers International Association; LOCAL UNION No. 75 of Sheet Metal Workers International Association; JOINT INDUSTRY BOARD OF THE HEATING & SHEET METAL INDUSTRY OF MARIN, SONOMA, MENDOCINO, LAKE, NAPA and SOLANO COUNTIES, CALIFORNIA; and W. R. WHITE,

Defendants.

COMPLAINT FOR INJUNCTION

As and for a first cause of action, plaintiffs allege as follows:

I.

This action arises under the provisions of Section 302, subdivisions (a) and (b), of the Labor-Management Relations Act, 1947, as amended (29 USC section 186) (hereinafter referred to as "LMRA 1947"), as hereinafter more fully appears.

II.

Jurisdiction of this action is conferred on this court by the provisions of Section 302, subsection (e), LMRA 1947.

III.

Plaintiffs Sheet Metal Contractors Association of San Francisco; Anderson & Rowe, Inc.; Atlas-Universal Service, Inc.; Atlas Heating & Ventilating Co., Ltd.; Conlin & Roberts; Fraser & Johnston Co.; Gilmore Air Conditioning Service; Wm. P. Goss Sheet Metal Works; Holbrook Merrill Co.; International Sales Co.; New Mission Heating & Ventilating Co.; Otis Sheet Metal, Inc.; Western Plumbing & Heating Co., Inc.; M. G. West Company; Pricemetal Corporation, are corporations organized and existing under and by virtue of the laws of the State of California.

Plaintiff Lloyd Hannan is an individual doing business under the firm name and style of Ace Sheet Metal Works. Plaintiff Fred J. Baciocco is an individual doing business under the firm name and style of Star Sheet Metal & Heating Co. Plaintiff Andreas Thoma is an individual doing business under the firm name and style of Thoma's Sheet Metal Shop. Plaintiff Harold R. Pike is an individual doing business under the firm name and style of American Heating & Sheet Metal Co. Plaintiff J. Oeser is an individual doing business under the firm name and style of Standard Furnace & Plumbing Co. Plaintiff Benjamin Barazoto is an individual doing business under the firm name and

style of Geneva Sheet Metal Co." Plaintiff Edwin Stevens is an individual doing business under the firm name and style of Apex Sheet Metal Works. Plaintiff George P. Schmitt.

Plaintiffs Samuel Cohen, Al West and James McNeilly are co-partners doing business under the firm name and style of Colan Heating & Sheet Metal Co. Plaintiffs Roy Delucchi, Elmo Delucchi and John Joseph Delucchi are co-partners doing business under the firm name and style of Delucchi Sheet Metal Works. Plaintiffs Florence M. Nelson, James A. Nelson, Jr., and E. L. Nattkemper are co-partners doing business under the firm name and style of James A. Nelson Co. Plaintiffs Wm. Quierolo, Sadie Quierolo and Richard W. Quierolo are co-partners doing business under the firm name and style of Q-Rolo Sheet Metal Products. Plaintiffs Wm. P. Scott, W. W. Cockins, John L. McCabe and J. J. Nicholson are co-partners doing business under the firm name and style of Scott Co. Plaintiffs Chas. F. Andrews and Edward E. Salomone are co-partners doing business under the firm name and style of Valley Sheet Metal Co.

IV.

Plaintiffs are engaged in an industry affecting commerce within this district and plaintiffs are employers of employees engaged in an industry affecting commerce within the meaning of Section 302, LMRA 1947.

V.

Defendants Sheet Metal Workers International Association, hereinafter referred to as "Interna-

tional Association"; Local Union No. 104 of Sheet Metal Workers International Association, hereinafter referred to as "Local Union No. 104"; Local Union No. 75 of Sheet Metal Workers International Association, hereinafter referred to as "Local Union No. 75"; Joint Industry Board of the Heating and Sheet Metal Industry of Marin, Sonoma, Mendocino, Lake, Napa and Solano Counties, California, hereinafter referred to as "Joint Industry Board," and W. R. White, are representatives of employees who are employed in an industry affecting commerce within the meaning of Section 302, LMRA 1947. Said International Association, Local Union No. 104, Local Union No. 75, and W. R. White are representatives of the employees of plaintiffs.

Said Joint Industry Board was organized and established July 1st, 1955. Defendant Local Union No. 104 maintains its principal offices in San Francisco, California, within this district. Defendants Local Union No. 75, Joint Industry Board, and W. R. White maintain their principal offices in Vallejo, California, within this district.

The duly authorized officers and agents of International Association, Local Union No. 104, Local Union No. 75, Joint industry Board, and W. R. White are engaged in representing and acting for the employee members of said defendants in the City and County of San Francisco, State of California, and in the counties of Marin, Sonoma, Mendocino, Lake, Napa and Solano counties, Califor-

nia, within this district. Defendant W. R. White is an officer and managing agent, to wit, Business Representative of Local Union No. 75.

VI.

Defendants are attempting to cause and compel plaintiffs to pay and deliver money and other things of value to defendant Joint Industry Board and have threatened to, and will, unless restrained by this court, cause the aforesaid employees of plaintiffs to strike and cease working for plaintiffs unless and until plaintiffs pay and deliver said money and other things of value to defendant Joint Industry Board.

VII.

That neither said money nor other thing of value was or is to be used or applied for any of the purposes specified in Section 302 (c) LMRA 1947, but, on the contrary, said money and other thing of value are being used and will be used for purposes other than those specified in said Section 302 (c) LMRA 1947.

VIII.

That said acts of said defendants, unless enjoined and restrained, will cause substantial and irreparable injury to plaintiffs for which no adequate remedy exists at law.

As and for a second, separate and distinct cause of action, plaintiffs allege:

I.

Plaintiffs hereby adopt and incorporate by refer-

ence thereto, as though fully set forth herein, all of the allegations of the first cause of action set forth herein, save and except paragraph VII thereof.

II.

Defendants are attempting to compel plaintiffs to pay and deliver money and other things of value to defendant Local Union No. 75 and have threatened to, and will, unless restrained by this court, cause aforesaid employees of plaintiffs to strike and cease working for plaintiffs unless and until plaintiffs pay and deliver said money and other things of value to defendant Local Union No. 75.

As and for a third, separate and distinct cause of action, plaintiffs allege:

I.

Plaintiffs hereby adopt and incorpoarte by reference as though fully set forth herein all of the allegations of the first cause of action set forth herein, save and except paragraph VII thereof.

II.

That pursuant to, and in compliance with the demands and threats of defendants, the plaintiffs listed below have paid to defendant Joint Industry Board the sums set opposite their names:

Apex Sheet Metal Works	$ 6.05
Atlas Heating & Ventilating Co., Ltd.	118.67
Gilmore Air Conditioning Service	19.93
Scott Co.	25.15
Western Plumbing & Heating Co., Inc.	27.10
Ace Sheet Metal Works	4.13

Wherefore, plaintiffs pray that defendants and each of them be enjoined and restrained from causing or attempting to cause plaintiffs or any of them to pay any money or thing of value to defendants Joint Industry Board and/or Local Union No. 75, and that said defendants Joint Industry Board and Local Union No. 75 and each of them be enjoined and restrained from receiving or accepting any money or thing of value from plaintiffs.

Plaintiffs further pray that defendant Joint Industry Board be ordered and directed to repay and return all monies or things of value paid or delivered to defendants by plaintiffs or received and accepted by defendants from plaintiffs and for such other relief as to the court may seem just and proper, and for plaintiffs' costs incurred herein.

/s/ ALMON E. ROTH.

/s/ GEORGE O. BAHRS.

[Endorsed]: Filed January 19, 1956.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

Come Now the defendants by their attorneys, Gilbert, Nissen & Irvin, and answering plaintiff's complaint, affirms, alleges, and denies as follows:

I.

Answering Paragraph I of the plaintiff's complaint, defendants deny each and every, all and singular, the allegations therein contained.

II.

Answering Paragraph II of the plaintiff's complaint, defendants deny each and every, all and singular, the allegations therein contained.

III.

Answering Paragraph III of the plaintiff's complaint, defendants allege that they do not have sufficient information upon which to form a belief, and based upon such lack of information and belief, deny each and every, all and singular, the allegations therein contained.

IV.

Answering Paragraph IV of the plaintiff's complaint, defendants admit that the plaintiffs other than the plaintiff Sheet Metal Contractors Association of San Francisco are engaged in the sheet metal contracting business within this district and in the course of said business employ journeymen sheet metal workers and apprentices and also in the course of said business make purchases of certain quantities of goods and materials originating outside of the State of California, but except as expressly admitted herein, defendants deny each and every, all and singular, the allegations therein contained.

V.

Answering Paragraph V of the plaintiff's complaint, defendants admit that defendant Local Union No. 104 is the collective bargaining representative of the journeymen sheet metal workers and

apprentices employed by the plaintiff; that the defendant Joint Industry Board was organized and established on about June 10, 1955, and became effective on July 1, 1955; that defendant Local Union No. 104 maintains its principal offices in San Francisco, California, within this district; that defendants Local Union No. 75 and Joint Industry Board maintain their respective principal offices in Vallejo, California, within this district; that defendant W. R. White is an officer and managing agent, to wit, Business Representative of said defendant Local Union No. 75; but except as expressly admitted herein, defendants deny each and every, all and singular, the allegations therein contained.

VI.

Answering Paragraph VI of the plaintiff's complaint, defendants deny each and every, all and singular, the allegations therein contained.

VII.

Answering Paragraph VII of the plaintiff's complaint, defendants deny each and every, all and singular, the allegations therein contained.

VIII.

Answering Paragraph VIII of the plaintiff's complaint, defendants deny each and every, all and singular, the allegations therein contained.

Second Cause of Action

I.

Answering Paragraph I of the Second Cause of Action of the plaintiff's complaint, defendants hereby incorporate by reference as though fully set forth herein all of defendants' answers to the allegations of plaintiff's First Cause of Action, save and except defendants' answer to Paragraph VII thereof.

II.

Answering Paragraph II of the Second Cause of Action of the plaintiff's complaint, defendants deny each and every, all and singular, the allegations therein contained.

Third Cause of Action

I.

Answering Paragraph I of the Third Cause of Action of the plaintiff's complaint, defendants hereby incorporate by reference as though fully set forth herein all of defendants' answers to the allegations of plaintiff's First Cause of Action, save and except defendants' answer to Paragraph VII thereof.

II.

Answering Paragraph II of the Third Cause of Action of the plaintiff's complaint, defendants deny each and every, all and singular, the allegations therein contained.

Wherefore, defendants and each of them pray that plaintiff's complaint be dismissed forthwith and that plaintiff take nothing by its said action as against defendants, and that judgment be entered in favor of defendants together with their costs of suit incurred herein, and for such other relief as to the Court may seem fitting and proper.

Dated this 10th day of April, 1956.

GILBERT, NISSEN & IRVIN,

By /s/ LOUIS A. NISSEN,
Attorneys for Defendants.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 12, 1956.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

Now Come the defendants by their attorneys, Gilbert, Nissen & Irvin, in the above-entitled and as by Rule 56 of the Federal Rules of Civil Procedure provided, move the Court for an Order dismissing the plaintiff's complaint and for summary judgment herein on the ground that plaintiff's complaint does not state a cause of action; upon the further ground that even if the plaintiff's complaint should be deemed to state a cause of action that the defendants are nevertheless entitled to judgment herein; upon the further ground that under all the

facts, pleadings, documents, papers, records, and files in this action that the defendants are entitled to judgment herein; and upon the further ground that no case or controversy appears in this action such as to entitle the plaintiff herein to any relief of this court whether by way of judgment, injunction, or declaratory judgment or any other type of judgment or relief, and that as a matter of fact the defendants herein are entitled to the dismissal of this complaint and relief from being forced to defend harassing, frivolous, and improper actions.

This motion is made and based upon the Notice of Motion served and filed herewith, and upon the Stipulation of Facts entered into between the parties filed herewith, and upon the pleadings, papers, records, documents and files in this action.

Dated this 22nd day of June, 1956.

GILBERT, NISSEN & IRVIN.

By /s/ ROBERT W. GILBERT,
Attorneys for Defendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 23, 1956.

[Title of District Court and Cause.]

STIPULATION OF FACTS

It Is Hereby Stipulated by and between the attorneys for the respective parties hereto as follows

for the purposes of plaintiffs' and defendants' motions for summary judgment only:

1. During the calendar year 1955 plaintiff employers collectively made direct purchases of goods and materials from outside the State of California of a value in excess of $500,000; and that plaintiff employers collectively made purchases in California through local dealers of goods and materials originating outside the State of California of a value in excess of $1,000,000; and plaintiffs collectively rendered services and furnished materials outside the State of California having a value of approximately $125,000.

2. Plaintiff employers are, and for several years last past, have been members of Sheet Metal Contractors Association of San Francisco. For several years last past plaintiff employers, and each of them, have been members of a multi-employer group for purposes of collective bargaining, and during said period plaintiffs, and each of them, have authorized Sheet Metal Contractors Association of San Francisco to negotiate and enter into a collective bargaining contract with Local Union No. 104 as the representative of the employees of plaintiffs, and for several years last past Local Union No. 104 has negotiated and entered into collective bargaining agreements with Sheet Metal Contractors Association of San Francisco.

3. On or about the first day of July, 1955, Sheet Metal Contractors Association, acting on behalf of,

and as the agent of, plaintiff employers, and each of them, made and entered into a collective bargaining agreement with Local Union No. 104, a copy of which is attached hereto and made a part hereof as Exhibit "A" as though fully set forth.

4. On or about the tenth day of June, 1955, Associated Heating and Sheet Metal Contractors, Inc., acting as the agent of, and on behalf of, various employers, other than the plaintiffs, doing business as Sheet Metal Contractors in the Counties of Marin, Sonoma, Mendocino, Lake, Napa and Solano, California, made and entered into a collective bargaining agreement with defendant Local Union No. 75 as representative of the employees of said employers. A copy of said agreement is attached hereto and made a part hereof as Exhibit "B" as though fully set forth.

5. During the calendar year 1955 said employers collectively made direct purchases of goods and materials from outside the State of California of a value in excess of $250,000, and during the calendar year 1955 said employers collectively made purchases in California through local dealers of goods and materials originating outside the State of California of a value in excess of $500,000.

6. On or about the tenth day of June, 1955, Associated Heating and Sheet Metal Contractors, Inc., acting as the agent of, and on behalf of, various employers, other than the plaintiffs, doing business as Sheet Metal Contractors in the Counties of

Marin, Sonoma, Mendocino, Lake, Napa and Solano, California, made and entered into a trust agreement with defendant Local Union No. 75 as representative of the employees of said employers. A copy of said agreement is attached hereto and made a part hereof as Exhibit "C" as though fully set forth.

7. On or about the tenth day of June, 1955, Associated Heating and Sheet Metal Contractors, Inc., nominated and appointed Paul Striechan, Kenneth Malm, Del Turney, Dave Bartholow, Joe Bell, and Frank Hall to act on its behalf as trustees of said trust, and said persons so named accepted said nominations and appointments and were and are acting as such trustees.

8. On or about the tenth day of June, 1955, defendant Local Union No. 75 nominated and appointed W. R. White, Harry Shortess, Charles Huber, David Beasley, Ray Detmayer, and Al Buratto to act on its behalf as trustees of said trust, and said persons so named accepted said nominations and appointments and were and are acting as such trustees.

9. That between July 1, 1955, and the present date, the following plaintiff employers have carried on jobs in the Counties of Marin, Sonoma, Mendocino, Lake, Napa, or Solano, California, employing on such jobs sheet metal workers who were members of defendant Local No. 104:

Ace Sheet Metal Works,

Apex Sheet Metal Works,
Gilmore Air Conditioning Service,
Western Plumbing and Heating Co., Inc.,
Atlas Heating & Ventilating Co., Ltd.,
Scott Co.,
Valley Sheet Metal Co.,
Otis Sheet Metal, Inc.

10. Between October 13 and December 15, 1955, defendant Local No. 75 threatened to encourage, cause and induce the employees of plaintiffs, and each of them, listed in Paragraph 9 above, to refrain from performing and to refuse to perform any services for said plaintiffs in the Counties of Marin, Sonoma, Mendocino, Lake, Napa, and Solano, California, unless said plaintiffs and each of them paid the sum of two and one-half cents (2½c) for each hour worked in said Counties into the Joint Industry Board Fund specified in Section 19 of Exhibit "B" hereof and Section Q of Exhibit "C" hereof.

11. That, thereafter, during the month of December, 1955, the following plaintiff employers commenced paying said sum of two and one-half cents (2½c) an hour into said Joint Industry Board Fund for every hour worked by each of their employees performing work in the counties above named, to wit:

Ace Sheet Metal Works,
Apex Sheet Metal Works,
Gilmore Air Conditioning Service,

Western Plumbing and Heating Co., Inc.,
Atlas Heating & Ventilating Co., Inc.,
Scott Co.,
Valley Sheet Metal Co.,
Otis Sheet Metal, Inc.

And said employers have continued to make said payments ever since and have notified defendant Local No. 75 that they are doing so solely because of the acts of defendant set forth in Paragraph 10 above.

Dated: June 22, 1956.

GILBERT, NISSEN & IRVIN,

By /s/ ROBERT W. GILBERT,
Attorneys for Defendants.

ROTH AND BAHRS.

By /s/ GEORGE O. BAHRS,
Attorneys for Plaintiffs.

EXHIBIT "A"

Standard Form of Union Agreement

Sheet Metal, Roofing, Ventilating and Air Conditioning
Contracting Divisions of the Construction Industry

This agreement entered into this 1st day of July, 1955, by and between Sheet Metal Contractors Association of San Francisco, hereinafter referred to

as the Employer, and Local Union No. 104, of Sheet Metal Workers' International Association of City and County of San Francisco, California, hereinafter referred to as the Union.

Article I.

Section 1. This Agreement covers the rates of pay, rules and working conditions of all employees of the Employer engaged in the manufacture, fabrication, assembly, handling, erection, installation, dismantling, reconditioning, adjustment, alteration, repairing, and servicing of all ferrous or nonferrous sheet metal work of No. 10 U. S. gauge or its equivalent or lighter gauge, and all other materials used in lieu thereof, all shop and field sketches used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches and all other work included in the jurisdictional claims of Sheet Metal Workers' International Association.

* * *

Article IV.

* * *

Section 3. Employees hired outside of the territorial jurisdiction of the Union to perform work outside of said jurisdiction and within the jurisdiction of another Local Union of Sheet Metal Workers' International Association shall be deemed to have complied with the provisions of this Article by acquiring and retaining membership in the said

Local Union in whose jurisdiction such employee performs said work.

* * *

Article VII.

Section 1. The minimum rate of wages for journeymen sheet metal workers covered by this Agreement when employed in a shop or on a job within the jurisdiction of the Union to perform any work specified in Article I of this Agreement shall be $..... per hour, except as hereinafter specified in Section 2 of this Article. Effective August 1, 1955, $3.075 per hour; September 1, 1955, $3.15 per hour, plus 7½c per hour Welfare Plan.

Section 2. On all work specified in Article I of this Agreement, fabricated and/or assembled within the jurisdiction of this Union, or elsewhere, for erection and/or installation within the jurisdiction of any other Local Union affiliated with Sheet Metal Workers' International Association, whose established wage scale is higher than the wage scale specified in this Agreement, the higher wage scale of the job site Union shall be paid to the journeymen employed on such work in the home shop or sent to the job site.

Section 3. Except as provided in Sections 2 and 4 of this Article, the Employer agrees that journeymen sheet metal workers hired outside of the territorial jurisdiction of the Union to perform or supervise work outside the jurisdiction of the Union and within the jurisdiction of another Local Union

affiliated with Sheet Metal Workers' International Association, shall receive the wage scale and working conditions of the Local Union in whose jurisdiction such work is performed or supervised.

Section 4. When sent by the Employer to supervise or perform work specified in Article I of this Agreement outside of the jurisdiction of the Union and within the jurisdiction of another Local Union affiliated with Sheet Metal Workers' International Association, journeymen sheet metal workers covered by this Agreement shall be paid at least the established minimum wage scale specified in Section 1 of this Article, but in no case less than the established wage scale of the Local Union in whose jurisdiction they are employed, plus all necessary transportation, traveling time, board and expense while employed in the jurisdiction of any other affiliated Local Union and the Employers shall be otherwise governed by the established working conditions of said Local Union. The provisions of this Section shall also apply to all jobs located where no Local Union of Sheet Metal Workers' International Association has jurisdiction.

Section 5. In applying the provisions of Sections 2, 3, 4 of this Article VII, the term "wage scale" shall include the value of all applicable hourly contractual benefits in addition to the hourly wage rate provided in said Sections.

* * *

Article XII.

Section 1. This Agreement and Addenda Number 1 through 3 attached hereto shall become effective on the 1st day of July, 1955, and remain in full force and effect until the 1st day of July, 1956, and shall continue in force from year to year thereafter unless written notice of reopening is given not less than ninety (90) days prior to the expiration date. In the event such notice of reopening is served, this Agreement shall continue in force and effect until conferences relating thereto have been terminated by either party.

In witness whereof, the parties hereto affix their signatures and seal this 1st day of August, 1955.

LOCAL UNION No. 104 OF SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION,

By /s/ FRANK BUCK.

SHEET METAL CONTRACTORS ASSOCIATION OF SAN FRANCISCO,

FRED BACIOCCO,
President;

ANTHONY MELEY,
Secretary.

[Seal]

EXHIBIT "B"

(Copy)

Standard Form of Union Agreement

Sheet Metal, Roofing, Ventilating and Air Conditioning Contracting Divisions of the Construction Industry

This agreement entered into this 10th day of June, 1955, by and between Associated Heating and Sheet Metal Contractors, Inc., 2054-4th Street, San Rafael, Calif., hereinafter referred to as the Employer, and Local Union No. 75, of Sheet Metal Workers' International Association of Marin, Sonoma, Mendocino, Lake, Napa and Solano Counties, hereinafter referred to as the Union.

[Articles I, IV and VII of this agreement are identical to those set forth in full in Exhibit A.]

* * *

Article XII.

Section 1. This Agreement and Addenda Number 1 through 6 attached hereto shall become effective on the 1st day of July, 1955, and remain in full force and effect until the 30th day of June, 1956, and shall continue in force from year to year thereafter unless written notice of reopening is given not less than ninety (90) days prior to the expiration date. In the event such notice of reopening is served, this Agreement shall continue in force and effect until conferences relating thereto have been terminated by either party.

In witness whereof, the parties hereto affix their signatures and seal this 10th day of June, 1955.

LOCAL UNION No. 75 OF SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION,

By .....

(Signature of Officer or Representative.)

ASSOCIATED HEATING & SHEET METAL CONTRACTORS, INC.,

By .....

(Signature of Officer or Representative.)

Addenda

* * *

17. Disputes:

It is hereby agreed and understood that the Working Rules and conditions of Local Union No. 75 are specifically referred to and made a part of this agreement. Any disputes arising out of this agreement shall be referred to the Joint Industry Board. The provisions for the settling of all disputes as set forth in the "Trust Agreement" of the Joint Industry Board shall be substituted for Article IX (nine), Sections one (1) through three (3).

The Joint Industry Board shall not alter or amend the Bargaining Agreement without a majority vote of both the Union and the Association membership.

* * *

19. Joint Industry Board:

A—Each Employer shall contribute to the Joint Industry Board Fund, the sum of two and one-half cents ($.025) for each hour worked (including overtime and for the equivalent hours of paid vacation time), by all journeymen and apprentices who are employed on work described in Article 1 (one) of the Standard Form of Union Agreement, for and/or within the jurisdiction of Local Union No. 75.

B—The report, covering all employees for all hours worked for the previous month, shall be forwarded to the Administration Office of the Joint Industry Board of the Heating and Sheet Metal Industry of Marin, Sonoma, Mendocino, Lake, Napa and Solano Counties, located at 316 Viriginia Street, Vallejo, California, with check covering same, not later than the tenth (10th) day of each month. Payments not made by the last day of such month shall be assessed a Twenty-five Dollar ($25.00) penalty, and this penalty shall be imposed for each month that said contribution is delinquent. If the contributions are delinquent, suit may be

instituted to collect payments and the Employer will pay reasonable attorneys' fees and court costs.

C—"The Trust Agreement creating the Joint Industry Board of the Heating and Sheet Metal Industry of Marin, Sonoma, Mendocino, Lake, Napa and Solano Counties is specifically referred to and made a part of this Agreement."

* * *

(Copy)

EXHIBIT "C"

Trust Agreement of
Joint Industry Board

This agreement entered into this 10th day of June, 1955, by and between Associated Heating and Sheet Metal Contractors, Inc., hereinafter referred to as the Employer, and Local Union No. 75 of Sheet Metal Workers' International Association of Marin, Sonoma, Mendocino, Lake, Napa and Solano Counties, hereinafter referred to as the Union.

There shall hereinafter be established a Joint Industry Board to be known as "Joint Industry Board of the Heating and Sheet Metal Industry of Marin, Sonoma, Mendocino, Lake, Napa and Solano Counties." Said Joint Industry Board shall be composed of an equal number of Employer and Union Representatives.

A—Purposes:

It shall be the functions of the Joint Board:

1—To supervise, administer and carry out all funds provided for by the Bargaining Agreement, except the Health and Welfare Fund which is administered by the Joint Trustees of the Sheet Metal Workers Health and Welfare Fund of Northern California.

2—To aid in the settlement of any and all disputes of any nature whatsoever which may arise between the Union, its members, agents and/or representatives, and the above-named association, its members, and all other employers of union members who are signatories to agreements with the union.

3—To set up and administer a joint arbitration committee and to provide further arbitration procedures should the Joint Arbitration Committee be unable to decide or resolve a dispute.

4—To supervise and administer a joint apprenticeship program; to establish Apprenticeship Standards; to attract persons of good moral character, ambition and competency to the industry; and to provide for the training of such persons in order to maintain and continue the high degree of skill and quality of work which now prevails in the Heating and Sheet Metal Industry.

5—To assist and aid the Heating and Sheet Metal Industry in continuing the high degree of skill which it now enjoys; to provide a forum where

Management and Labor can discuss ways and means for further co-operation; to counsel and advise and render such other assistance to individual members of the Union, and all employers who are signatories hereto, which will aid and facilitate efforts to effectuate high standards in the Industry. It is understood that neither the Union or Association shall be superseded by the Joint Industry Board as far as the relationship existing between each of them and their respective members; nor do they relinquish their responsibility to their respective members; nor do they relieve their members from the liabilities and obligations such members have to the Union or Association, respectively, under the provisions of the Constitution and By-Laws of each of them, and the same shall continue in full force and effect.

6—To meet with representatives of public and quasi-public bodies or groups and with other groups or associations in the construction Industry or allied fields; to foster, promote and urge beneficial legislation within the State of California relating to the Heating and Sheet Metal Industry, its standards, specifications, improve technological skills or any other matter pertaining thereto; to acquaint the public at large with the work of the Heating and Sheet Metal Industry and to foster good public relations. No action may be taken which knowingly violates the anti-trust and monopoly laws of the United States, the State of California, or any political subdivisions thereof. The Joint Industry Board as such will take no active part in any political campaign.

B—Composition:

1—The Joint Industry Board shall be made up of six (6) members representing the Employers, and six (6) members representing the Union. Two employer members and two union members from each of the following three areas: Marin County, Sonoma-Mendocino Counties, and Napa-Solano Counties.

2—The employer members shall be actively engaged in the Heating and Sheet Metal Industry in the geographical areas covered by the Bargaining Agreement and shall employ members of Local Union #75.

3—The designation of any representative may be revoked at any time at the pleasure of the party making the appointment. Any vacancy on the Board, caused by death, resignation or revocation of the designation shall be filled by the Union or Employers, respectively, as the case may be. Notice of any new designation is to be given in writing to the Secretary of the Board.

C—Limitation of Liability:

Each of the Board members shall be protected in acting upon any paper or document believed by him to be genuine and to have been made, executed or delivered by the proper party purporting to have made, executed or delivered the same, and shall be protected in relying and acting upon the opinion of legal counsel in connection with any matter per-

taining to the administration or carrying out the function of the Board.

The Board members shall not be liable for any action taken or omitted by them in good faith, or for acts of any agent, employee or Attorney selected by the Board with reasonable care, or for any act or omission of any other Board member.

No member of the Board shall be liable individually for the failure of any bank or other agency where funds may be deposited.

D—Quorum:

1—It shall take at least three (3) of the employer members and three (3) of the union members to establish a quorum for an official meeting of the Joint Industry Board.

E—Absentees:

If for any reason a member of the Joint Industry Board cannot be present at a meeting, the Union and the Employer Groups, respectively, shall have the power and authority to appoint another person automatically to act as an alternate and take the place of the absent Board member at a meeting or meetings. This person shall sit at these meetings as a member of the Board, with full power to vote and act upon all questions and resolutions that shall come up at that meeting or meetings in which the said alternate shall sit for the absent Board member.

F—Expenses:

The Board shall have the authority to provide for the payment of expenses for attending Board or Committee meetings or for other expenses incurred in connection with Joint Industry Board business.

G—Personnel:

The Board shall employ a General Manager and a Field Representative, and shall have the authority to employ such other personnel, professional or otherwise, as it may deem necessary for the proper fulfillment of its duties, and shall have the power to fix salaries and compensations for said personnel.

H—Officers:

The Officers for the Joint Industry Board shall be: The President, Vice-President, Secretary and the Treasurer.

I—Election of Officers:

All Officers shall be elected by a majority vote of the Employer members, together with a majority vote of the Union members. Two (2) of the officers shall be from the Employers and two (2) of the officers shall be from the Union members. The term of office shall be one year. Election shall be held in the month of January.

J—Duties of Officers:

President

(a) The President shall preside at all meetings of the Board and shall be a member ex-officio of all regular and special committees. The President shall be entitled to vote on all business properly brought before the Board.

(b) The business of the Board shall be conducted under the general direction of the President.

(c) He shall see that all funds of the Board are deposited in its name and to its credit in such depositary as may be designated by the Board, subject to allocation by the Board. He shall see that disbursements are made as ordered by the Board.

(d) He shall perform such other duties as pertain to the office of President and shall see that all resolutions of the Board shall be carried into effect.

Vice-President

The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the power of the President and shall perform such other duties as the Board shall prescribe by resolution.

Secretary

The Secretary shall be responsible for the recording of all minutes of the meetings of the Joint Board.

Treasurer

The treasurer shall examine and verify the accounts of all funds received by the Board, collected by the General Manager and deposited by him.

General Manager

There shall be a General Manager who shall be appointed by a majority vote of the Union group, together with a majority vote of the Employer Group. The compensation and the terms and conditions of his employment shall be fixed by the Board.

The General Manager shall be appointed for the duration of this Agreement, provided, however, that his services may be terminated by a majority vote of the Union Group, together with a majority vote of the Employer Group.

The duties of the General Manager shall be as follows:

(a) The General Manager shall manage and operate the business office of the Board, shall attend all meetings of the Board but shall not be entitled to vote thereat; he shall keep minutes of the proceedings and carry on correspondence of the Board. He shall conduct all Board business assigned to him by the President or Vice-President; he shall, with the sanction of the Board or with the approval of the President or Vice-President between meetings, be permitted to employ whatever help may be required for the proper performance of his duties.

(b) The General Manager shall be a member ex-officio of all regular and special committees. He

shall not be entitled to vote on any committee business nor shall his presence at regular or any special committee meetings be counted in order to constitute a quorum of the said committee. He shall be solely responsible for all records entrusted to and kept by the Board, and shall make them available to the Board in the following manner:

The Board may instruct the General Manager at any time to make them available for inspection by a Board member or may designate a committee to inspect his records at the request of any member of the Board.

(c) The General Manager shall collect all funds as may be due the Board and shall manage and keep records and accounts of all funds so received. All monies received by him shall be deposited immediately in the name of the Board in such banks or trust companies as may be designated. The General Manager shall see that all bills and other indebtedness are paid when ordered by the Board, and he shall make a detailed report thereof at the meetings of the Board. The accounts kept by him shall be audited by an independent auditor selected by the Board. He shall furnish a bond to the Board satisfactory in form and amount, the fee premium to be paid by the Board.

Field Representative

The Joint Industry Board shall have the authority to appoint a Field Representative. This shall require a majority vote of the Union Group together with a majority vote of the Employer Group.

The compensation and the terms and conditions of his employment shall be fixed by the Board.

The Field Representative shall be appointed for the duration of this Agreement, provided, however, that his services may be terminated by a majority vote of the Union Group, together with a majority vote of the Employer Group.

The Field Representative shall be responsible to and work under the direction of the General Manager.

The Field Representative shall furnish a bond to the Board satisfactory in form and amount, the fee and premium to be paid by the Board.

K—Signing of Checks:

All Joint Industry Board checks shall be signed by the General Manager and the Treasurer or by either the General Manager or the Treasurer and the President or Vice-President of the Board.

L—Removal of Officers:

Any one or more of the officers selected by the Board may be removed by a majority vote of the Employer members, together with a majority vote of the Union members, based on the full membership of the Board.

M—Vacancies:

If any officer resigns or is removed from office or for any reason is unable to continue to serve in

the office which he holds, the office left vacant shall be filled by the Board in the same manner as hereinbefore provided for election of officers, except that such person so elected shall serve only for the unfinished portion of his predecessor's term.

The regular meeting of the Board shall be held on the Third Tuesday of each month or such other day as the Board shall fix. Written notice of the meetings shall be mailed by the General Manager to all members of the Board.

Special meetings may be called by the President or Vice-President or upon the request of three members of the Board to the President. Written notices of such meetings shall be mailed by the General Manager to all members of the Board at least three days before such special meetings.

0—

The Board shall have the power to make rules and regulations for the conduct of its affairs. It shall have the power to make rules and regulations, binding on all Employers who are signatories hereto and upon the Union, as are consistent with all the terms and conditions of this and the Bargaining Agreement, provided, however, that they are not inconsistent with the Constitution and By-Laws of the Local Union and its International, the Sheet Metal Workers' International Association, or the Constitution and By-Laws of the Association signatory hereteo.

The Board shall have the power and authority to study and correct improper working conditions and shall decide all controversies or disputes arising under this agreement. Decision of the Board shall be made by a majority vote of the Union members, together with a majority vote of the Employer members, based on full membership of the Board. In the event that the Board is unable to reach agreement, the members thereof shall choose an impartial person who shall act as arbitrator. In the event that the members of the Board are unable to reach agreement on an arbitrator within ten days they shall request the President of the University of San Francisco to designate an arbitrator. The decision of the arbitrator shall be final and binding on all parties.

P—Committees:

The Joint Industry Board shall have the power to appoint all committees which it feels are necessary or desirable for carrying out the functions and purposes of the Joint Industry Board. All committees shall be composed of an equal number of representatives from the Employers and the Union and the Chairman of each committee shall be a member of the Joint Industry Board.

Q—Joint Industry Board Fund:

Each Employer shall pay into a fund to be designated as the Joint Industry Board Fund the sum of two and one-half cents (2½) per hour for each

hour worked by each employee covered by the Bargaining Agreement.

Said payment shall be based upon the hours worked, payable commencing as of July 1, 1955, and payable thereafter for each succeeding month during the term of this Agreement.

This Agreement shall become effective on the 1st day of July, 1955, and remain in full force and effect until the 30th day of June, 1956, and shall continue in force from year to year thereafter unless written notice of reopening is given not less than ninety (90) days prior to the expiration date. In the event such notice of reopening is served, this Agreement shall continue in force and effect until conferences relating thereto have been terminated by either party.

In witness whereof, the parties hereto affix their signatures and seal this 10th day of June, 1955.

LOCAL UNION #75 OF SHEET METAL WORKERS' INTERNATIONAL ASSN.,

By /s/ W. R. WHITE,

(SEAL)

ASSOCIATED HEATING & SHEET METAL CONTRACTORS, INC.,

By /s/ WM. A. GABLE.

(SEAL)

[Endorsed]: Filed June 23, 1956.

[Title of District Court and Cause.]

MOTION OF PLAINTIFFS FOR SUMMARY JUDGMENT

Plaintiffs hereby move the Court for summary judgment against defendants and each of them as prayed for in the complaint on file herein.

This motion is based upon the pleadings and upon the stipulation on file in the above-entitled matter.

ROTH AND BAHRS,

By /s/ GEORGE O. BAHRS,
Attorneys for Plaintiffs.

Receipt of copy acknowledged.

[Endorsed]: Filed June 26, 1956.

[Title of District Court and Cause.]

MEMORANDUM ORDER

These are cross motions for summary judgment in an action brought under 29 U.S.C. 186(c) by a number of employers against two labor unions, a parent organization of those two labor unions, a labor official, and a joint industry board.

The action arises out of an agreement between an employers' group known as Associated Heating and Sheet Metal Contractors, Inc., and Local #75 of the Sheet Metal Workers' International Association, providing for the establishment of a "Joint

Industry Board," and for the contribution by the employers covered by the agreement of a sum of 2½c for each hour worked by the members of the Union for any of the employers, to defray the expenses of the Joint Industry Board. The Board consists of six members for the employers and six members for the union. Decisions of the Board are made by a concurrence of a majority of the employer members with a majority of the union members. A fair reading of the Trust Agreement of Joint Industry Board, which governs the relationship of the parties thereto, leads to the conclusion that the power to expend the funds contributed by the employers, resides in the Board, and is thus dependent upon the approval of the employer members.

The purposes for which the Board is established are not entirely clear. The Trust Agreement must be read in the context of the collective bargaining agreement concluded between the same parties, and which, by cross-references in the two documents, is made the prevailing agreement in case of conflict. Thus read, the functions of the Board would seem to be the establishment and administration of a joint arbitration committee to settle all grievances arising between the parties, or any of them, or any of the members of either of them, whether or not related to the collective bargaining contract; the establishment, supervision and administration of a joint apprenticeship program, including a training program and a program for attracting desirable per-

sons to the industry; "to assist and aid" the industry in maintaining high standards of skill, and to render assistance to employers, unions, and individuals in the industry for the purpose of effectuating high standards in the industry; to carry on publicity and lobbying for the benefit of the industry; and "to supervise, administer and carry out" (sic) all funds provided for by the bargaining agreement between the parties, except the Health and Welfare Fund. That fund is separately administered, and seems to be the only fund of substance in the bargaining agreement, other than the fund for the Joint Industry Board, which is the subject of this action.

The claim of plaintiffs is that the payment, pursuant to the "Trust Agreement of Joint Industry Board," of 2½c per man-hour to the Joint Industry Board fund violates the prohibition against payments by employers to representatives of their employees contained in 29 U.S.C. 186, commonly known as Section 302 of the Labor Management Relations Act of 1947. The prohibition in question is contained in two provisions which read as follows:

> "(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.
>
> "(b) It shall be unlawful for any representative of any employees who are employed in

an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value." 29 U.S.C.A. Sec. 186(a) and (b).

A preliminary contention by defendants may be simply disposed of. It is that the statute in question cannot apply to this agreement, because the signatory on the employer side is not any individual employer of union members, but the association of employers which does not itself hire any employees. The purpose of Congress to prevent misuse of funds, and the possibility of the concealment of bribes and extortions in the form of payments by employers to labor representatives, may not be so easily evaded as defendants suggest. The funds in question obviously come from the employers. The fact that the employer association signed the agreement on behalf of the employers, rather than the individual employers, does not change the realities of the situation. The agreement to pay is in fact and law made by the employers.

The question for decision, therefore, is whether this agreement for payments to the Joint Industry Board, which is composed of six employer and six union members, is an agreement to pay to "any representative of any of his employees" within the meaning of 29 U.S.C.A. 186.

Substantially the same issue was before the court in United Marine Division v. Essex Transportation Co., 216 F. 2d 410 (3d Cir. 1954). The Court there

held that an agreement for payment of funds to six trustees, chosen half by employers and half by the union, was not an agreement to pay funds "to any representatives of any of his employees." The Court said:

> "These trustees were not, in our judgment, representatives of the employees. They were trustees of a welfare fund. It is true that they were chosen half and half by the employers' association and this union. But we think that when set up as a board, as they were in this case, these individuals are not acting as representatives of either union or employers. They are trustees of a fund and have fiduciary duties in connection therewith as do any other trustees. The terms under which they act were carefully spelled out." Id., at 412.

The distinction between the Essex case and the case at bar is the fact that in the Essex case the fund in question was a welfare fund, whereas in the instant case the fund does not include the welfare and pension funds and is subject to expenditure on purposes of a rather large and vague nature. Nevertheless, the rationale of the Essex case seems to be equally applicable here. The Joint Industry Board will hold the funds in question in trust for the purposes enumerated in the Trust Agreement. Those purposes, while in certain cases auxiliary to collective bargaining procedures, go beyond them and are not confined by the terms of the collective bargaining agreement except in case of conflict. It may be

instructive to note what another court has said in answer to an argument similar to that of the employers here, that the Joint Industry Board funds may conceivably be used to defray general union expenses. In Upholsterers' International Union v. Leathercraft Furn. Co., 82 F. Supp. 570 (E. D. Pa. 1949), the employers pointed to the possibilities of abuse inherent in a situation where the union representatives were in sole control of funds contributed by the employer for health and welfare purposes. The Court said:

> "* * * whenever the trustees use, or attempt to use, directly or indirectly, the fund for a purpose other than for the sole and exclusive benefit of the employee-members, this court, when called upon, will enjoin the trustees from making the improper expenditures. The burdening of the fund with undue administrative expenses or lush salaries for union officials will not be tolerated; * * *" Id., at 573.

The Joint Industry Board is not a part of the union, and its governing agreement expressly provides for the separate character of the Board from either of the parties, and expressly preserves their duties and relationships with respect to each other and each of them with respect to their members. The agreement provides for a careful accounting and separate deposit system for Joint Industry Board funds from those of the union. If the employer members refuse to sanction an expenditure, for any reason, there is a provision for arbitration

in the agreement. Under these circumstances, this court cannot hold that the payments in question are payments "to any representative." The union members of the Joint Industry Board, in that capacity, are not "representatives" of the employees within the meaning of 29 U.S.C. 186.

Plaintiffs' motion for summary judgment is denied, and defendants' motion for summary judgment is granted. Let appropriate orders be prepared.

16th August, 1956.

/s/ EDWARD P. MURPHY,
United States District Judge.

[Endorsed]: Filed August 20, 1956.

In the United States District Court, Northern District of California, Southern Division
Civil Action File No. 35206

SHEET METAL CONTRACTORS ASSOCIATION OF SAN FRANCISCO, a California Corporation, etc.,

Plaintiffs,

vs.

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, et al.,

Defendants.

ORDER FOR SUMMARY JUDGMENT

This cause having come on regularly to be heard before me on July 9, 1956, pursuant to a Notice of

Motion by the plaintiffs for Summary Judgment based upon the pleadings and upon the Stipulation of Facts on file in the above-entitled matter, George O. Bahrs of the law firm of Roth and Bahrs, appearing as counsel for the plaintiffs, and pursuant to a Motion for Summary Judgment filed by the defendants herein, based upon the Stipulation of Facts entered into between the parties and filed in this action, and upon the pleadings, papers, records, documents, and files in this action, Robert W. Gilbert and Louis A. Nissen of the law firm of Gilbert, Nissen & Irvin, appearing as counsel for the defendants herein, and the Court being fully advised in the premises and having issued a Memorandum Order which was filed on August 20, 1956, and good cause appearing therefor,

It Is Hereby Ordered, Adjudged and Decreed that the plaintiffs' Motion for Summary Judgment shall be and hereby is denied;

It Is Further Ordered, Adjudged and Decreed the defendants' Motion for Summary Judgment shall be and hereby is granted, and that the plaintiffs' complaint shall be and is hereby dismissed and summary judgment is hereby granted in favor of each and all of the defendants herein so that plaintiffs shall take nothing by their action, and

It Is Further Ordered, Adjudged and Decreed the plaintiffs shall bear their own costs of suit and the defendants are hereby awarded and the plaintiffs are hereby ordered to pay the defendants their costs of suit.

Dated this 27th day of September, 1956.

/s/ EDWARD P. MURPHY,
United States District Judge.

Affidavit of service by mail attached.

[Endorsed]: Filed September 27, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that plaintiffs above named hereby appeal to the United States Court of Appeals for the Ninth Circuit from the summary judgment denying an injunction entered in this action on September 27, 1956.

ROTH AND BAHRS,

By /s/ GEORGE O. BAHRS.

[Endorsed]: Filed October 2, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case

and constitute the record on appeal herein as designated by the attorneys for the appellant; and for the appellees:

Excerpt from Docket Entries.
Complaint.
Answer.
Notice by Defendants and Motion for Summary Judgment.
Memorandum of Defendant in Support of Motion for Summary Judgment.
Stipulation of Facts.
Memorandum Order of Court for Judgment.
Order for Summary Judgment.
Notice of Appeal.
Appeal Bond.
Appellants' Designation of Record on Appeal.
Statement of Points by Appellants.
Appellees' Designation of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 7th day of November, 1956.

[Seal] C. W. CALBREATH,
Clerk.

By /s/ MARGARET P. BLAIR,
Deputy Clerk.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and constitute the supplemental record on appeal herein as designated by the attorneys for the appellants:

Notice and Motion of Plaintiff for Summary Judgment.

Designation of Supplemental Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 15th day of November, 1956.

[Seal] C. W. CALBREATH,
Clerk,

By /s/ MARGARET P. BLAIR,
Deputy.

[Endorsed]: No. 15355. United States Court of Appeals for the Ninth Circuit. Sheet Metal Contractors Association of San Francisco, a Corporation, et al., Appellants, vs. Sheet Metal Workers' International Association, et al., Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: November 7, 1956.

Docketed: November 8, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 15355

SHEET METAL CONTRACTORS ASSOCIATION OF SAN FRANCISCO, a California Corporation, et al., Appellants,

vs.

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, et al., Appellees.

STATEMENT OF POINTS RELIED UPON ON APPEAL

The points upon which appellants intend to rely in this appeal are as follows:

1. The Court erred in granting defendants' motion for summary judgment.

2. The Court erred in denying plaintiffs' motion for summary judgment.

3. The Court erred in failing to hold that payments by appellant employers into the Joint Industry Board fund, as set forth in paragraph 11 of the Stipulation of Facts herein, constituted payments of money or other thing of value by employers to a representative of their employees who are employed in an industry affecting commerce.

ROTH AND BAHRS,

By /s/ GEORGE O. BAHRS,
Attorneys for Appellants.

Affidavit of service by mail attached.

[Endorsed]: Filed November 14, 1956.